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8	Attorneys for Complainant
	BEFORE THE
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
10	STATE OF CALIFORNIA
11	In the Matter of the Accusation Against:
12	DUSTIN MATTHEW LIKENS  Case No. 3855
13	5030 Gavilan Way, #46 Oceanside, CA 92057
14	Pharmacy Technician License No. TCH  A C C U S A T I O N
15	83670
16	Respondent.
	Communication and all the communication and all the communications are all the communications and all the communications are all
. 17	Complainant alleges:
18	<u>PARTIES</u>
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21	2. On or about June 2, 2008, the Board of Pharmacy issued Pharmacy Technician
22	License Number TCH 83670 to Dustin Matthew Likens (Respondent). The Pharmacy Technician
23	License was in full force and effect at all times relevant to the charges brought herein and will
24	expire on May 31, 2012, unless renewed.
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Accusation

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#### 7. Section 4060 of the Code states:

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No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own

stock of dangerous drugs and devices.

#### 8. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

- (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.
- (i) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.
- (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency....

#### COST RECOVERY

9. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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### **DRUGS**

- 10. <u>Marijuana</u> is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business & Professions Code section 4022.
- 11. <u>Methylenedioxymethamphetamine</u>, or Ecstasy, is a Schedule I controlled substance as designated by Health and Safety Code section 11054 and is a dangerous drug pursuant to Business & Professions Code section 4022.

### FIRST CAUSE FOR DISCIPLINE

## (Unprofessional Conduct-Possession of Controlled Substance)

- 12. Respondent is subject to disciplinary action under Code sections 4301, subdivisions (j) and (o), in conjunction with section 4060, for unprofessional conduct in that Respondent unlawfully possessed controlled substances, to wit, marijuana and Ecstasy on or about August 15, 2009 and/or August 16, 2009. The circumstances are as follows:
- 13. In or about April 2009, K.F., the Pharmacy Manager of Wal-Mart store 10-5075, noted there were missing prescription bottles of Norco, or hydrocodone, a controlled substance. An investigation was initiated that prompted an immediate and unscheduled drug screening of all of the store's employees on Monday, August 17, 2009.
- 14. Respondent was employed at the store as a Pharmacy Technician and was working at the store on August 17, 2009. When Respondent was informed of the investigation and the drug screening, Respondent advised K.F. that he did not want to submit to drug screening because he had "smoked pot" over the weekend and that he chose to resign instead.
- 15. Respondent also admitted to D.M., the Health and Wellness Director of the store, that Respondent had taken Ecstasy and smoked marijuana over the weekend and that he refused to submit to the drug test. Respondent was terminated from his employment on August 17, 2009.

## SECOND CAUSE FOR DISCIPLINE

# (Unprofessional Conduct - Unlawful Self-Administration of Controlled Substance)

16. Respondent is subject to disciplinary action under Code section 4301, subdivision (h), for unprofessional conduct in that Respondent unlawfully self-administered a controlled

1	substance, to wit, marijuana and Ecstasy to himself on or about August 15, 2009 and/or August
2	16, 2009, as more fully set forth in paragraphs 13-15 above, and incorporated herein as though set
3	forth in full.
4	PRAYER PRAYER
5	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6	and that following the hearing, the Board of Pharmacy issue a decision:
7	1. Revoking or suspending Pharmacy Technician Number TCH 83670, issued to Dustin
8	Matthew Likens;
9	2. Ordering Dustin Matthew Likens to pay the Board of Pharmacy the reasonable costs
10	of the investigation and enforcement of this case, pursuant to Business and Professions Code
11	section 125.3; and,
12	3. Taking such other and further action as deemed necessary and proper.
13 14	
15	DATED: 223/11 Jugine Herold
16	Executive Officer
17	Board of Pharmacy Department of Consumer Affairs
18	State of California  Complainant
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